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3 A Limited Liability Partnership
4 Including Professional Corporations
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6 Attorneys for Plaintiff
7 BBG COMMUNICATIONS, INC.

FILED
U.S. DISTRICT COURT
Eastern District of Texas

JUN 19 2003

DAVID MALAND, CLERK
By 
Deputy

2.03-CV-227

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF TEXAS

11
12 BBG COMMUNICATIONS, INC., a
13 Delaware corporation,

14 Plaintiff,

15 v.

16 NETWORK COMMUNICATIONS
INTERNATIONAL CORP., a Texas
17 corporation; William Pope, an
individual; Jay Walters, an individual;;
18 Jeffrey Walters, an individual ; and
DOES 1 through 10, inclusive

19 Defendants.

Case No.

**DECLARATION OF RAFAEL
GALICOT**

25
26
27
28 **DECLARATION OF RAFAEL GALICOT**

1
2 I, RAFAEL GALICOT, under penalty of perjury, declare and state:

3
4 1. I am the Secretary of BBG Communications, Inc. ("BBG"). BBG is a
5 Delaware corporation duly organized and existing pursuant to the laws of the State
6 of Delaware with a principal place of business located at 1658 Gales Boulevard,
7 Suite B, San Diego, California 92154. In my capacity as Secretary, I am responsible
8 for the oversight of operations and management of BBG, including the receipt and
9 review of all confidential information produced by BBG in the ordinary course of
10 business. I have personal knowledge of all of the facts and circumstances set forth
11 herein and if called as a witness, I could and would competently testify thereto.

12 2. BBG has filed for and/or federally registered its trademarks and logos
13 both in the United States and internationally throughout the world. BBG owns the
14 following United States federal trademark registrations, among others: BBG® (Reg.
15 No. 2,371,265 (Int. Cl. 38)); BBG COMMUNICATIONS® (Reg. No. 2,375,351
16 (Int. Cl. 38)) and BBG Design(stylized)® (Reg. No. 2,371,266 (Int. Cl. 38))
17 (collectively, the "BBG Marks"). Copies of the official United States Patent and
18 Trademark ("USPTO") database information concerning the registrations for the
19 BBG Marks are attached hereto as Exhibit A.

20 3. BBG is a well-known, multinational, multifunctional communications
21 holding company serving diverse international markets that include North America,
22 Europe, Japan, Israel, Latin America and the Caribbean basin. BBG provides
23 internal and external communications in various countries acting as carrier and as an
24 international long distance reseller. BBG sells millions of dollars of
25 telecommunications services annually, and the consuming public in the industry has
26 come to associate the BBG trademarks and logos exclusively with its services.

27 4. The telecommunications business is very competitive, and information
28 collected about sources of international services, marketing information, potential

1 customers, sales representatives are all very confidential and considered proprietary
2 information of a telecommunications company. During their employment and other
3 work for BBG described in this Complaint, each BBG employee and sales agents
4 have knowledge of, access to, was entrusted with, and/or developed for BBG's
5 benefit certain confidential, proprietary and trade secret information (referred to
6 collectively as "Confidential Information") relating to BBG's telecommunications
7 services and operations, including marketing efforts; the processes, methods and
8 equipment by which the company operates; names of and information about the
9 company's employees, sales agents, customers and prospective customers; and the
10 company's business and financial records. Each BBG employee and sales agent has
11 a duty to maintain the Confidential Information in confidence. BBG developed the
12 Confidential Information over a long period of time and at significant cost. BBG
13 has maintained, and continues to maintain, the confidentiality of this information. Its
14 availability to a competitor (or potential competitor) would provide a significant
15 competitive advantage. The Confidential Information is not generally available to
16 the public and constitutes secret information owned by BBG.

17 5. BBG has registered and owns the internet domain name
18 BBGCOMM.COM and uses such URL for its email addresses on its email server.
19 BBG's practice for allocating its email from its email server to its employees follows
20 the following nomenclature: [first name]BBGCOMM.COM or [first name last
21 initial]BBGCOMM.COM. For example, my business email address as
22 RAFAEL@BBGCOMM.COM, and BBG's President, Mr. Gregorio Galicot, has his
23 business email address listed as GREGORIO@BBGCOMM.COM.

24 6. Defendant NCIC is a direct competitor of BBG in the
25 telecommunications industry. A true and correct copy of the NCIC website offering
26 the identical services to BBG is attached hereto as Exhibit B. I am personally very
27 familiar with NCIC as a direct competitor, as we have been competing on an
28

1 international basis for hotel accounts, telephone pay phone contracts, government
2 communications licenses, local sales agents and the like.

3 7. BBG and NCIC have had significant competitive contacts over the past
4 5 years, including in the Caribbean, and have frequently placed competitive bids for
5 contracts with individuals at various hotels, pay phone operators and other accounts.
6 I personally know Mr. William "Bill" Pope, and have had many contacts with him in
7 the industry over the past years.

8 8. BBG has contacted NCIC in the past for various unsavory business
9 practices, including but not limited to the use of the BBG trademark in NCIC's
10 website metatag html programming. Attached hereto as Exhibit C is a true and
11 correct copy of a demand letter I directed be sent by our attorneys to Mr. Bill Pope
12 at NCIC dated March 18, 2003, complaining of such activity.

13 9. NCIC has also engaged in other acts of unfair competition, including
14 the placement of stickers bearing its international telephone calling numbers over
15 those of BBG's in Ireland in 2002, interfering with BBG's government contract
16 licensing in foreign countries such as Italy, the attempted registration of BBG's
17 trademark in foreign jurisdictions and the like. True and correct copies of demand
18 letters sent by our counsel relating to NCIC's prior activities in Italy are attached
19 hereto as Exhibits D and E. However, none of these previous illegal acts ever rose
20 to such a level that BBG believed it was necessary to give rise to expensive and
21 time-consuming litigation.

22 10. BBG has never authorized Defendants to use, distribute, sell, offer for
23 sale, advertise, or promote any sales or offer any services bearing any mark similar
24 to or likely to be confused with the BBG Marks, including but not limited to
25 registration of the internet domain name BBGCOM.COM (the "BBGCOM.COM
26 domain name").

27 11. Unbeknownst to BBG, and upon information and belief, Defendants
28 registered the internet domain name BBGCOM.COM on or about April 17, 2001.

1 A copy of the official record associated with the Network Solutions Whois database
2 reflects the following information, and a true and correct copy of such record is
3 attached hereto as Exhibit F. All information associated with the registered domain
4 name is fake, including the owner's name (BBG COM) the address: 1234 Gouge
5 Street, San Diego, California 80210 (there is no such address) and the telephone
6 numbers 619-555-1212 (FAX) 619-555-1212 are fake. The only information which
7 can be traced from this registration is the contact for 20944@whoisgkg.net.

8 12. I directed BBG information technology personnel to conduct an
9 investigation into the contact information, and we were able to determine that the
10 person associated with the username for the BBGCOM.COM domain name is
11 "bpope" at the email address globalbrosky@yahoo.com. A true and correct copy of
12 the webpage for a password reminder associated with the BBGCOM.COM domain
13 name obtained for 20944@whoisgkg.net (the information associated with the
14 BBGCOM.COM domain) is attached hereto as Exhibit G. Therefore, the only
15 logical conclusion is that "bpope" is Defendant William "Bill" Pope, the President of
16 NCIC.

17 13. While the registration of the BBGCOM.COM domain name by
18 Defendants was bad enough, BBG has learned within the past 3 weeks that
19 Defendants have used such domain name to maintain one or more email servers to
20 register email addresses corresponding to the management personnel of BBG! BBG
21 recently contracted Mr. Michael Stomps as a sales agent for BBG. Mr. Stomps
22 previously worked for NCIC and informed me that NCIC is in possession of
23 numerous emails intended for BBG management. Mr. Stomps told me that NCIC
24 had set up email addresses for the BBG personnel, including its top management.

25 14. Apparently, Mr. Jeffrey Walters (an agent and/or employee of NCIC
26 and a relative of Defendant Jay Walters) is in charge of reviewing the misdirected
27 emails that come into the NCIC server through the illicit use of the BBG personnel
28 names. Based on information and belief, using a different email address at

1 jeffrey@3comcr.com, Mr. Walters collects these emails, screens them, and then
2 forwards them to Mr. Pope for review and comment. Based on information and
3 belief, Mr. Pope then sends directions to various NCIC agents or employees based
4 on BBG's confidential information revealed in them.

5 15. It is my understanding that the software on the internet will send a
6 message to an email sender if an email address does not exist. This means that
7 normally, if an email is sent to a non-existent email address, the sender will receive
8 a message that says that the email is "Undeliverable" which alerts the sender that the
9 email address was typed wrong. In this case, however, none of the BBG personnel
10 would have had an email "kicked back" as undeliverable which included the
11 "BBGCOM.COM" (missing the "m" in the genuine BBG email address). Therefore,
12 none of the BBG personnel, outside third parties, or the public using the misspelled
13 address would ever have any knowledge that their emails were not actually sent to
14 or received by BBG personnel.

15 16. Because NCIC set up the illicit email addresses, the emails would in
16 fact be delivered to the NCIC server, while the sender would believe that the email
17 had been received by the BBG recipient. NCIC's illegal activities have operated to
18 defraud the public, as emails which would have been received by BBG from the
19 public (such as customer service issues) and BBG has not been able to issues raised
20 by the public. An example is a customer from Pfizer, Inc. who was seeking a credit
21 to an account and intended to send an email to Annel, a BBG employee. The
22 customer sent the email to annel@bbgcom.com, which was intercepted by Jeffrey
23 Walters, who then sent the email to Michael Stomps, inquiring if he had called the
24 hotel where the customer call originated. BBG never had a chance to respond to this
25 customer's problem, as the email was never delivered to Annel, nor would the
26 customer receive an "undeliverable" response. Clearly, this particular customer,
27 who was seeking a response from BBG, would believe that BBG was not
28

1 responding to its concerns. The public is being defrauded and harmed by such
2 intercepted email traffic.

3 17. I am aware in some instances that the email does not get a response
4 from BBG because no-one from the legitimate BBG email address ever received the
5 person's email. In the instance detailed above, the end user customer from Pfizer,
6 Inc. was seeking a credit to his own credit card for a wrong charge. He sent
7 multiple emails to the inaccurate BBGCOM.COM address, and never got the credit
8 made to his credit card by BBG (who would have issued such credit immediately).
9 In fact, he never received an electronic response from BBG because BBG had no
10 way of knowing he was attempting to contact BBG. As clearly exemplified, such
11 activities inflict direct financial harm on innocent individuals in the public, and
12 moreover, blame will be attributed to BBG for defrauding the customer. Moreover,
13 under state credit laws, BBG is potentially open to liability under strict liability
14 consumer protection statutes for these fraudulent activities.

15 18. I have ascertained the following types of confidential information have
16 been obtained by NCIC through the use of these illicit email addresses: BBG pricing
17 information, BBG marketing information, BBG customer information; information
18 on acquisitions sought by BBG, attorney-client privileged information sent to BBG
19 by its Mexican counsel concerning proposed transactions; sales agent sales
20 information and spreadsheets, potential customer contacts, and bidding information
21 directly competitive to NCIC, among other valuable trade secret information.

22 18. I asked for and obtained a few copies of emails from Mr. Stomps'
23 computer(s) which were sent to him during his previous association with NCIC.
24 These emails prove that (1) NCIC set up the illicit email addresses and has control
25 over all emails using BBG's personnel names with the BBGCOM.COM domain
26 name; (2) NCIC has received confidential and proprietary information of BBG; (3)
27 NCIC has knowingly used such information to its commercial benefit and to the
28 detriment of BBG; (4) such emails have intentionally been disseminated among

1 NCIC agents/employees; and (5) Mr. Pope has complete knowledge and control
2 over the information illegally obtained from BBG and has used such information to
3 interfere with BBG's economic relationships for the direct benefit of NCIC as BBG's
4 direct competitor. A few samples illustrate the gravity of NCIC's actions:

5
6 1. Email referenced above dated January 16, 2003, where a BBG
7 customer from Pfizer, Inc. was asking for a credit to an account and intended to send
8 an email to Annel, a BBG employee. The customer sent the email to
9 annel@bbgcom.com, which was intercepted by Jeffrey Walters, who then sent the
10 email to Michael Stomps, inquiring if he had called the hotel where the customer
11 call originated. A true and correct copy of this email is attached hereto as Exhibit H.

12 2. Email dated March 12, 2003, where Joanne Pearson, Operations
13 Manager for BBG in Ireland, sent a sales presentation with BBG billing information,
14 guarantee, Ireland hotel references and a BBG customer agreement to a potential
15 BBG customer, the O'Callaghan Hotels. Mr. Jeffrey Walters obtained and
16 forwarded the email with the sales presentation material and proprietary information
17 to Mr. Michael Stomps, Mr. Jeroen Sluiter and Mr. T. Hoogstraaten, saying
18 "Someone needs to go after BBG Ireland." A true and correct copy of this email is
19 attached hereto as Exhibit I.

20 3. Email dated March 17, 2003, where we were internally discussing
21 the hiring of a new agent in Bermuda, someone inadvertently sent the email to the
22 BBGCOM.COM domain, and once intercepted by NCIC, Jeffrey Walters cut and
23 past information in the email to Michael Stomps, saying "Contact him at the end of
24 this week or in about 2 weeks . . . You need to come up with a story how you got the
25 info. . . A true and correct copy of this email is attached hereto as Exhibit J.

26 4. Email dated April 1, 2003, where Brian Rhys sent an Excel
27 spreadsheet with confidential and proprietary sales information for the preceding
28 August-February to me (using the incorrect email address inadvertently), which was

1 intercepted by Mr. Walters and forwarded to Bill Pope, who said "Has Stomps made
2 any attempts to contact C&W Jamaica??? Does he understand their [sic] is an open
3 window of opportunity?" A true and correct copy of this email is attached hereto as
4 Exhibit K.

5 5. Email dated March 25, 2003 from a BBG customer concerning
6 billing charges for a hotel in St.. Maarten, which was intercepted by Mr. Walters and
7 forwarded to Michael Stomps, saying "What is the strategy on St. Maarten? Are you
8 guys still in there? Doing any traffic? Do you have a local rep?" A true and correct
9 copy of this email is attached hereto as Exhibit L.

10 6. Email dated April 22, 2003 from Damon Rhys, BBG Marketing
11 Director Asia/Oceania, concerning a contract with Melia Bali hotel contract, and
12 attaching a spreadsheet with call detail records for the hotel that was intercepted by
13 Mr. Walters and forwarded to Mr. Stomps, saying "They have some problems with
14 this hotel . . ." A true and correct copy of this email is attached hereto as Exhibit M.

15
16 19. Moreover, upon discovery of NCIC's setting up BBG's personnel's
17 names diversionary email accounts, I sent an order to have BBG personnel search
18 their email records to see if any had mistakenly sent an internal email containing
19 confidential, trade secret information to an email address corresponding to the illicit
20 email account with the missing "m." Surprisingly, we discovered numerous such
21 emails sent to and from our own personnel, and which, based on information and
22 belief, would be currently in the possession of NCIC. Because of the inherent
23 naming capabilities and reply capabilities contained in various email software
24 programs, including Microsoft Outlook, a single mistake using the BBGCOM.COM
25 address instead of the genuine BBGCOM.COM address can compound into tens of
26 emails being routed from BBG personnel to the illicit email addresses set up by
27 NCIC. Exemplars of such emails are collectively attached hereto as Exhibit N. The
28

1 following emails show samples of the various highly confidential and proprietary
2 information diverted by NCIC to the illicit email addresses:
3

4 1. Email dated March 19, 2003 from Mr. Clemesha to me attaching
5 pending contract negotiation details, including contact information.

6 2. Email dated March 17, 2003 from Mr. Clemesha to me, attaching a
7 spreadsheet containing all of BBG's highly confidential and proprietary contract
8 information for the Marriott Hotel chain on a worldwide basis, including all contact
9 information, sales details and addresses.

10 3. Email dated October 10, 2002 from Mr. Jorge Macari to Gregorio
11 Galicot enclosing spreadsheets containing sales information for the Marriott hotel
12 chain, marked "Confidential."

13 4. Email dated March 21, 2003 from Brian Rhys to Rafael Galicot
14 enclosing pricing information for Toronto and London telecommunications lines.

15 5. Email dated January 16, 2003 from a BBG employee, Delma, sent
16 internally to Mr. Gregorio Galicot containing confidential information on BBG's
17 financial records and credit card information.

18 6. Email dated January 7, 2003 from a BBG employee, Delma, sent
19 internally to Damon Rhys and Mr. Gregorio Galicot containing confidential
20 information concerning international telephone numbers for New Zealand hotels.
21

22 20. Upon information and belief, Defendants are in possession of and are
23 using copious but unquantifiable amounts of BBG's internal, confidential and
24 proprietary information through the use of the illicit email addresses set up to
25 correspond to the employees of BBG via the registration of the domain name
26 BBGCOM.COM incorporating BBG's federally registered trademark. I believe that
27 NCIC's use of the BBG mark was willful, having been adopted with knowledge of
28 Plaintiff's prior rights in and to the BBG Marks, with the intent to trade on and

1 benefit from the goodwill established in the BBG Marks by Plaintiff. NCIC has
2 willfully used the confidential information of BBG obtained through these illicit
3 email addresses to the commercial detriment of BBG.

4 21. It is my belief that unless BBG immediately recovers all of its
5 confidential information residing on those computers relating to the
6 BBGCOMM.COM, the public shall continue to be defrauded, and BBG shall
7 continue to suffer substantial injury to its business caused by its competitor, NCIC.
8 BBG needs immediate access to NCIC's computer systems to determine who in the
9 public has been defrauded so as to rectify any end user related problems, and to
10 determine the extent of NCIC's illegal activity, the volume of confidential
11 information in the hands of NCIC, and to regain possession of its trade secrets.

12 22. It is also my belief that it is not reasonable to anticipate that NCIC
13 would have registered a domain name incorporating BBG's trademark and which
14 corresponds directly to the pre-existing domain name of BBG, with only the
15 following "m" missing from BBGCOMM.COM. Further, I believe it is not
16 reasonable to anticipate that NCIC would have set up email addresses corresponding
17 to each of BBG's key employees, intercepted emails which were inadvertently sent
18 to the wrong email address, and then used the information obtained to the
19 competitive detriment of BBG. In my opinion, this is egregious and illegal conduct
20 which does not conform in any way to business norms.

21 23. Upon information and belief, all of the information relating to NCIC's
22 wrongdoing is electronic in nature. Based on NCIC's prior actions (using fake
23 information and numerous layers of technological efforts to hide its activities), it is
24 my belief that if NCIC receives any prior notification of these proceedings, there is a
25 substantial probability that the evidence of this wrongdoing will be spoliated. If the
26 electronic information contained in NCIC's computers is erased or deleted, then
27 BBG will never have any ability to determine the extent of damage done to BBG's
28 business by NCIC's illegal activities.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Date: June 18th 2003

~~RAFAEL GILICOT~~



UNITED STATES PATENT AND TRADEMARK OFFICE

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Record 1 out of 1**Check Status**

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Typed Drawing

Word Mark	BBG
Goods and Services	IC 038. US 100 101 104. G & S: telecommunications services, namely, electronic transmission of voice and data. FIRST USE: 19960630. FIRST USE IN COMMERCE: 19970113
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75812854
Filing Date	October 1, 1999
Published for Opposition	May 2, 2000
Registration Number	2371265
Registration Date	July 25, 2000
Owner	(REGISTRANT) BBG Communications, Inc. CORPORATION DELAWARE 401 B Street, Suite 1260 San Diego CALIFORNIA 92101
Attorney of Record	DOLORES LYONS
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT

A

Latest Status Info

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2003-06-17 14:00:07 ET

Serial Number: 75812854

Registration Number: 2371265

Mark (words only): BBG

Current Status: Registered.

Date of Status: 2000-07-25

Filing Date: 1999-10-01

Registration Date: 2000-07-25

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2000-07-31

CURRENT APPLICANT(S)/OWNER(S)

1. BBG Communications, Inc.

Address:

BBG Communications, Inc.
401 B Street, Suite 1260
San Diego, CA 92101
United States

State or Country of Incorporation: Delaware

Legal Entity Type: Corporation

GOODS AND/OR SERVICES

telecommunications services, namely, electronic transmission of voice and data

International Class: 038

First Use Date: 1996-06-30

First Use in Commerce Date: 1997-01-13

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

Latest Status Info

PROSECUTION HISTORY

2003-06-12 - TEAS Change of Correspondence Received
2002-04-05 - PAPER RECEIVED
2000-07-25 - Registered - Principal Register
2000-05-02 - Published for opposition
2000-03-31 - Notice of publication
2000-03-03 - Approved for Pub - Principal Register (Initial exam)
2000-03-03 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

DOLORES LYONS (Attorney of record)

Tawnya Wojciechowski
Sheppard, Mullin, Richter & Hampton LLP
Fourth Floor
650 Town Center Drive
Costa Mesa CA 92626
Phone Number: 714-513-5100
Fax Number: 714-513-5130
Email Address: tawnya@sheppardmullin.com

TESS - Document Display



UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Electronic Search System (TESS)

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PTO HOME

TRADEMARK

TESS HOME

NEW USER

STRUCTURED

FREE FORM

BROWSE: DICT

BOTTOM

HELP

Logout

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Word Mark	BBG
Goods and Services	IC 038. US 100 101 104. G & S: telecommunications services, namely electronic transmission of voice and data. FIRST USE: 19960630. FIRST USE IN COMMERCE: 19970113
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	260102 260109 260115 260116 260121 260509 260521
Serial Number	75812855
Filing Date	October 1, 1999
Published for Opposition	May 2, 2000
Registration Number	2371266
Registration Date	July 25, 2000
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Attorney of Record	DOLERES LYONS
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Latest Status Info

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Serial Number: 75812855

Registration Number: 2371266

Mark



(words only): BBG

Current Status: Registered.

Date of Status: 2000-07-25

Filing Date: 1999-10-01

Registration Date: 2000-07-25

Law Office Assigned: LAW OFFICE 106

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International Class: 038

<http://tarr.uspto.gov/servlet/tarr?regser=serial&entry=75812855>

6/17/2003

Latest Status Info**First Use Date:** 1996-06-30**First Use in Commerce Date:** 1997-01-13**Basis:** 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

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2000-03-03 - Approved for Pub - Principal Register (Initial exam)

2000-03-03 - Case file assigned to examining attorney

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Correspondent (Owner)

DOLERES LYONS (Attorney of record)

Tawnya Wojciechowski

Sheppard, Mullin, Richter & Hampton LLP

Fourth Floor

650 Town Center Drive

Costa Mesa CA 92626

Phone Number: 714-513-5100**Fax Number:** 714-513-5130**Email Address:** tawnya@sheppardmullin.com



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Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75812856
Filing Date	October 1, 1999
Published for Opposition	May 16, 2000
Registration Number	2375351
Registration Date	August 8, 2000
Owner	(REGISTRANT) BBG Communications, Inc. CORPORATION DELAWARE 401 B Street, Suite 1260 San Diego CALIFORNIA 92101
Attorney of Record	DOLORES LYONS
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMUNICATIONS" APART FROM THE MARK AS SHOWN
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Latest Status Info

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Serial Number: 75812856

Registration Number: 2375351

Mark (words only): BBG COMMUNICATIONS

Current Status: Registered.

Date of Status: 2000-08-08

Filing Date: 1999-10-01

Registration Date: 2000-08-08

Law Office Assigned: LAW OFFICE 106

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2000-08-11

CURRENT APPLICANT(S)/OWNER(S)

1. BBG Communications, Inc.

Address:

BBG Communications, Inc.
401 B Street, Suite 1260
San Diego, CA 92101
United States

State or Country of Incorporation: Delaware

Legal Entity Type: Corporation

GOODS AND/OR SERVICES

telecommunications services, namely, electronic transmission of voice and data

International Class: 038

First Use Date: 1996-06-30

First Use in Commerce Date: 1997-01-13

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "COMMUNICATIONS"

Latest Status Info

PROSECUTION HISTORY

2003-06-12 - TEAS Change of Correspondence Received
2002-04-05 - PAPER RECEIVED
2000-08-08 - Registered - Principal Register
2000-05-16 - Published for opposition
2000-04-14 - Notice of publication
2000-03-17 - Approved for Pub - Principal Register (Initial exam)
2000-03-06 - Examiner's amendment mailed
2000-03-03 - Case file assigned to examining attorney

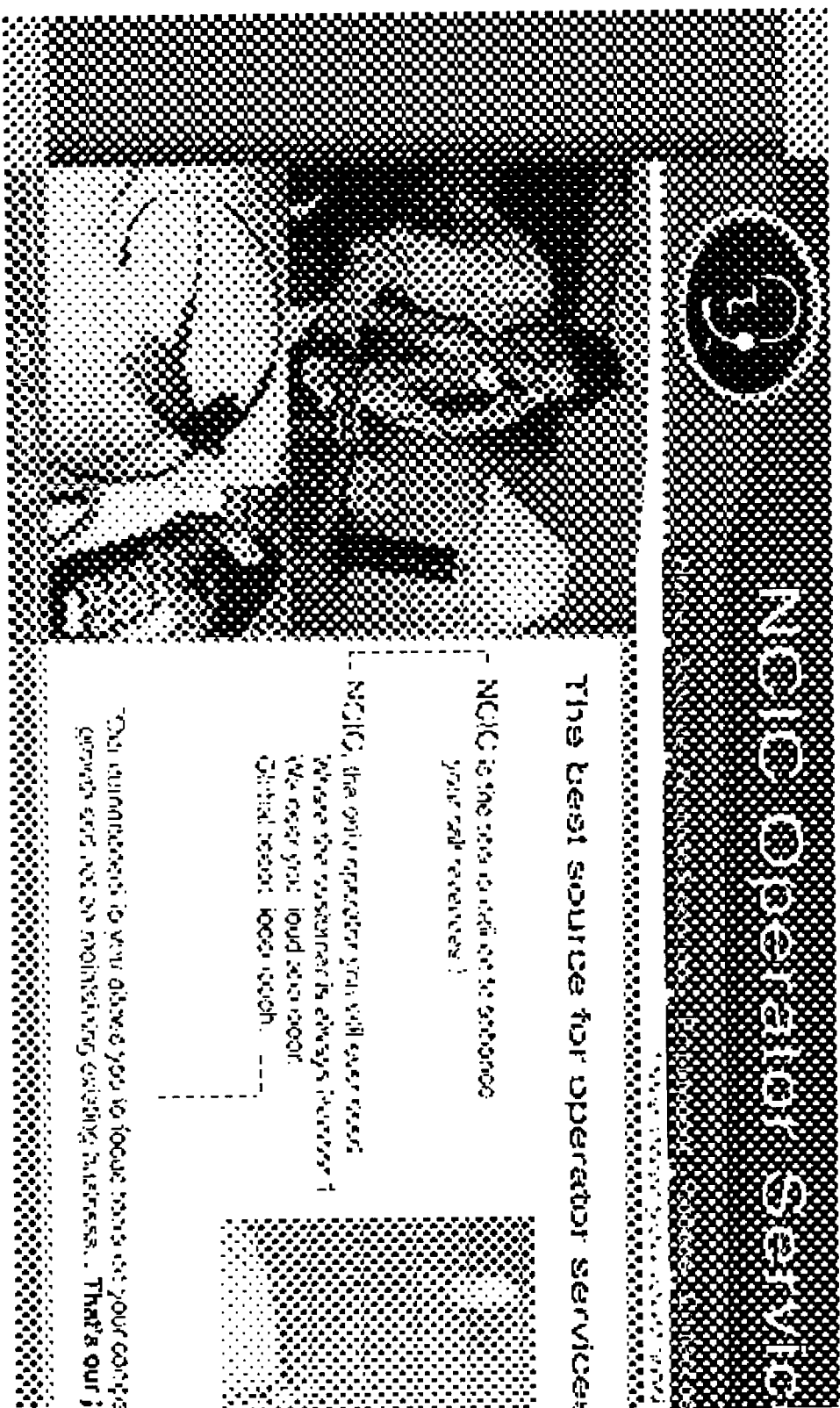
CONTACT INFORMATION

Correspondent (Owner)

DOLORES LYONS (Attorney of record)

Tawnya Wojciechowski
Sheppard, Mullin, Richter & Hampton LLP
Fourth Floor
650 Town Center Drive
Costa Mesa CA 92626
Phone Number: 714-513-5100
Fax Number: 714-513-5130
Email Address: tawnya@sheppardmullin.com

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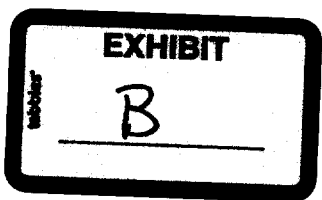
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(714) 424-2828
tawnya@sheppardmullin.com

82X-81326

March 18, 2003

VIA FACSIMILE AND MAIL: (903) 757-4455

Mr. Bill Pope
President
Network Communications International Corporation
1201 Loop 281
Longview, Texas 75606

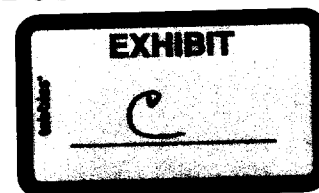
Re: BBG Communications
Metatag Use of BBG Federally Registered Trademark

Dear Mr. Pope:

As you know, this firm represents BBG Communications, Inc. ("BBG") in its legal matters. BBG is the current owner and registrant of the service marks BBG, BBG COMMUNICATIONS and the BBG LOGO used in connection with telecommunications services on a worldwide basis (the "BBG Marks").

We have discovered that your company's internet website contains a hidden html source page that contains BBG's federally registered trademark BBG in its metatag. As this page is immediately hidden from sight as a redirected page on your html source page, you have clearly intended to use BBG's trademark in a clandestine manner. Such activities are substantial evidence of your willful intent to infringe upon BBG's intellectual property rights.

Therefore, we demand that your company, or any company or person affiliated in any way with your company, cease any use of the BBG trademarks, including in your hidden html source coding. Additionally, we confirm BBG's



NCIC

March 18, 2003

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position that any adoption or use by any third party of a mark which is identical to or substantially similar to the BBG Marks would (i) likely confuse, mislead or deceive the public as to any affiliation between BBG and such third party, including NCIC; (ii) operate to falsely suggest that BBG has endorsed such use of such mark with NCIC's services; and (iii) would dilute BBG's distinctive quality of its BBG Marks. As you are a direct competitor to BBG, your use of the BBG trademark in your internet website metatags is clearly intended to re-direct customers or potential customers and internet traffic from BBG to NCIC and only indicates your intent to trade on the valuable goodwill which BBG has expended substantial effort to develop. This constitutes unlawful acts of trademark infringement, dilution and unfair competition. BBG is prepared to take all appropriate legal action in the event of any continued acts of unfair competition or trademark infringement.

Please give us a written response by the close of business on March 30, 2003 regarding whether you will immediately remove the federally registered BBG trademark from your hidden html source coding. We also confirm that neither NCIC nor any of its affiliates will promote their businesses in any location in the world using any of the BBG Marks. Absent a response, we shall proceed with all appropriate actions. Please contact me if you have any questions.

With kind regards,



Tawnya R. Wojciechowski

for SHEPPARD, MULLIN, RICHTER & HAMPTON

cc: BBG Communications, Inc.
Jerry Gumpel, Esquire

oc41240152

(858) 720-8965
jgumpel@sheppardmullin.com

82X-81326

September 24, 2001

VIA FACSIMILE AND MAIL: (903) 757-4455

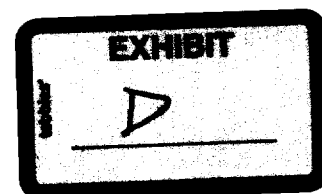
Mr. Bill Pope
President
Network Communications International Corporation
1201 Loop 281
Longview, Texas 75606

Re: BBG Communications and
Registration of BBG Trademark in Italy

Dear Mr. Pope:

This firm represents BBG Communications, Inc. ("BBG") in its legal matters. BBG is the current owner and registrant of the service marks BBG, BBG COMMUNICATIONS and the BBG LOGO used in connection with telecommunications services on a worldwide basis (the "BBG Marks").

We received a copy of an Italian trademark application filed on May 29, 2001 by Ms. Maria van Santvillet for the mark BBG COMMUNICATIONS and Logo. We have also received a letter from an attorney in Costa Rica purporting to be a demand letter on behalf of Mrs. Van Santvillet regarding BBG's use of the mark BBG COMMUNICATIONS in Italy. We also are aware of a proposal by NCIC to provide telecommunications services to Telecom Italia, in direct competition with BBG. As you know, BBG has an existing contract with Telecom Italia and is officially authorized by the Italian Communications Authority to provide such services.



NCIC

September 24, 2001

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We have also been advised that your company has a family affiliation with another company, Redcom S.A., also located in Costa Rica, which does business in Costa Rica under the name Redcom and in Aruba and St. Marten under the name Bluephone. We understand that NCIC and Redcom utilize an identical logo bearing the name NCIC on its letterhead, and we believe that Ms. Van Santvillet has a relationship with Redcom dba Bluephone. In view of Ms. Van Santvillet's application for the BBG COMMUNICATIONS mark incorporating the NCIC Logo, we believe NCIC is ultimately responsible for the Italian application.

Therefore, we demand that your company, or any company or person affiliated in any way with your company, cease any use of the BBG Marks. We shall be separately communicating with Ms. Van Santvillet and her attorney to require that she voluntarily relinquish the Italian trademark application she recently filed, or face a cancellation action in Italy based on her bad faith registration of this mark. We urge you to contact Ms. Van Santvillet to obtain a voluntary withdrawal of this mark from the Italian Trademark Office. Absent her agreement to do so, we will be compelled to take appropriate action against her.

Additionally, we confirm BBG's position that any adoption or use by any third party of a mark which is substantially similar to the BBG Marks would (i) likely confuse, mislead or deceive the public as to any affiliation between BBG and such third party, including NCIC and Ms. Van Santvillet; (ii) operate to falsely suggest that BBG has endorsed such use of such mark with NCIC's services; and (iii) would dilute BBG's distinctive quality of its BBG Marks. As you are a direct competitor to BBG, your attempt to have a third party register or adopt a substantially similar mark or logo can only indicate your intent to trade on or, worse yet, fraudulently destroy the valuable goodwill which BBG has expended substantial effort to develop. This would constitute unlawful acts of trademark infringement and unfair competition under the laws of Italy and the United States, and would also violate the provisions of the Paris Convention.

Please be advised that we are also evaluating BBG's rights and the potential unlawful activities of NCIC relating to NCIC's interference with its contract with Telecom Italia. NCIC has no right to make any statements to Telecom Italia that reference any authorization by the Italian government for NCIC to provide telecommunications services in Italy under the authority given to BBG

NCIC

September 24, 2001

Page 3

by the Italian Communication Authority. It is our view that any attempt by NCIC to use any authority received by BBG, or any attempt to associate NCIC with BBG, shall constitute unfair competition and fraud under the laws of both Italy and the United States. NCIC's promotion of its operator assisted call services using the BBG Marks clearly is such unfair competition. It is meant to confuse the public as well as Italian authorities who may believe that the business being promoted is the licensed BBG business when in truth that is not the case. BBG is prepared to take all appropriate legal action here in the United States or as may be appropriate in other countries, in the event of any continued acts of unfair competition or trademark infringement.

Please give us a written response by the close of business on July 27, 2001 regarding whether you will obtain Ms. Van Santvillet's cooperation to voluntarily abandon the Italian BBG COMMUNICATIONS trademark registration. We also confirm that neither NCIC nor any of its affiliates will promote their businesses in any location in the world using any of the BBG Marks. Absent a response, we shall proceed against all responsible parties in the appropriate venue. Please contact me if you have any questions.

With kind regards,

A handwritten signature in black ink, appearing to read "JSG" or similar, written in a cursive style.

Jerry J. Gumpel

for SHEPPARD, MULLIN, RICHTER & HAMPTON

cc: BBG Communications, Inc.

oc41240152

(619) 338-6665
jgumpel@smrh.com

82X-80649

July 20, 2001

VIA FACSIMILE: 011 506 224 6018

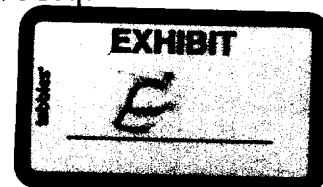
Bernan Salazar Urena
Bufete Bernan Salazar y Asociados

Re: BBG Communications

Dear Mr. Urena:

This firm represents BBG Communications, Inc. ("BBG") in its legal matters. We were forwarded a copy of your letter of June 14, 2001, purporting to be a demand letter on behalf of Mrs. Van Santvillet regarding BBG's use of the mark BBG COMMUNICATIONS in Italy. We have also obtained a copy of an Italian trademark application filed on May 29, 2001 by Ms. Maria van Santvliet for the mark BBG COMMUNICATIONS and Logo. As we believe this will be a matter of Italian and American law, please confirm your continued representation of Ms. Van Santvillet in this matter or forward the name and address of her Italian and United States attorneys.

BBG is the current owner and registrant of the service marks BBG, BBG COMMUNICATIONS and the BBG LOGO used in connection with telecommunications services on a worldwide basis (the "BBG Marks"). The BBG Marks are well-known throughout the world and enjoy considerable goodwill in the telecommunications business. Any adoption or use by any third party of a mark which is substantially similar to the BBG Marks would (i) likely confuse, mislead or deceive the public as to any affiliation between BBG and such third party, including Ms. Van Santvillet; (ii) operate to falsely suggest that BBG has endorsed such use of such mark, and (iii) would dilute BBG's distinctive quality of its BBG Marks. Therefore, we demand that Ms. Van Santvillet, or any company or person affiliated in any way with Ms. Van Santvillet, cease any attempt to register or use of BBG Marks. We require



Mr. Bernan Salazar Urena

July 20, 2001

Page 2

that she voluntarily relinquish the Italian trademark application she recently filed, or face a cancellation action in Italy based on her bad faith registration of this mark. We urge you to contact Ms. Van Santvillet to obtain a voluntary, express abandonment of this mark from the Italian Trademark Office. Absent her agreement to do so, we will be compelled to take appropriate action against her.

We also note that the Italian application not only contains the mark BBG COMMUNICATIONS, but incorporates the identical logo to that of a competitor of BBG called NCIC, also located in the United States. We have also been advised that NCIC has a family affiliation with another company, Redcom S.A., located in Costa Rica, which does business in Costa Rica (under the name Redcom) and in Aruba and St. Marten (under the name Bluephone). We understand that NCIC and Redcom utilize an identical logo bearing the name NCIC on its letterhead, and we believe that Ms. Van Santvillet has a relationship with Redcom dba Bluephone. In view of Ms. Van Santvillet's application for the BBG COMMUNICATIONS mark incorporating the NCIC Logo, we believe NCIC has participated in some manner with Ms. Van Santvillet in the wrongful and bad faith filing of the Italian application. We have separately contacted NCIC regarding this matter.

It is our view that any attempt by Ms. Van Sentvillet or NCIC to maintain the Italian registration or attempt to falsely associate NCIC with BBG, shall constitute unfair competition under the laws of both Italy and the United States. BBG is prepared to take all appropriate legal action in the event of any continued acts of unfair competition or trademark infringement.

Mr. Bernan Salazar Urena

July 20, 2001

Page 3

Please give us a written response by the close of business on July 27, 2001 regarding whether Ms. Van Santvillet will voluntarily give up the Italian BBG COMMUNICATIONS trademark registration. Absent a response, we shall proceed against her in the appropriate venue.

Please contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to be "JS" or "JSG", written in a cursive style.

Jerry J. Gumpel

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

WORD-OCNTW41240123.1

WHOIS SEARCH RESULTS

bbgcom.com

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Registrant:

BBG Com
Administrator Network
1234 Gouge St
San Diego, Ca 80210
US
619-555-1212 (FAX) 619-555-1212
20944@whois.gkg.net

Administrative Contact:

BBG Com
Administrator Network
1234 Gouge St
San Diego, Ca 80210
US
619-555-1212 (FAX) 619-555-1212
20944@whois.gkg.net

Technical Contact:

BBG Com
Administrator Network
1234 Gouge St
San Diego, Ca 80210
US
619-555-1212 (FAX) 619-555-1212
20944@whois.gkg.net

Billing Contact

BBG Com
Administrator Network
1234 Gouge St
San Diego, Ca 80210
US
619-555-1212 (FAX) 619-555-1212
20944@whois.gkg.net

Registrar...: gkg.net (<http://register.gkg.net/>)

Domain Name: BBGCOM.COM

Created on.....: 17-APR-2001

Expires on.....: 17-APR-2006

Record last updated on...: 02-APR-2003

Status.....: ACTIVE

Trans
doma
fo

\$

a

include

We
S

EXHIBIT

F

Domain servers in listed order:

NS.GKG.NET
NS2.GKG.NET

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

SEARCH AGAIN

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 - change password
 - create a GKG username
 - ? how to create a GKG username
 - lookup your GKG username
 - lookup a GKG username associated with a domain
 - forgot your password?
 - Administrative GKG Username Change Letter
- ▶ **renewals**
- ▶ **parking**
- ▶ **DNS (domain name server/host name) management**
- ▶ **domain transfers/ change registrar to GKG**
- ▶ **resellers**
- ▶ **whois**

Password Reminder

The contact usernames and email addresses associated with **bbgcom.com** are listed below. Click a link to have the password emailed to that particular contact username.

Username	Email	Contact Type
bpope	globalbrosky@yahoo.com	Registrant
bpope	globalbrosky@yahoo.com	Administrative
bpope	globalbrosky@yahoo.com	Technical
bpope	globalbrosky@yahoo.com	Billing

EXHIBIT

G

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